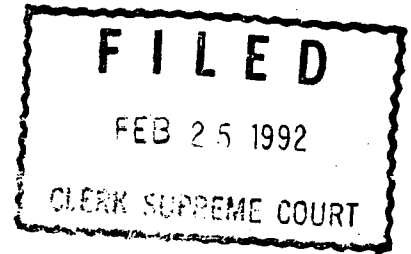


IN THE COURT OF APPEALS OF IOWA

No. 1-622 / 91-515



285

GEORGE W. HUFFEY and JEAN HUFFEY,

Appellants,

vs.

JOSEPH LEA, DOROTHY LEA, GILBERT LEA, FLORENCE FLAHERTY,
LINDA RACEK, THERESA LEA, ANTHONY LEA, LAVONNE
LEA-PETERSON, DONNA LEA, AMBROSE LEA and EUNICE LEA,

Appellees.

ANTHONY LEA,

Counterclaimant,

vs.

GEORGE HUFFEY and JEAN HUFFEY,

Counterclaim Defendants.

Appeal from the Iowa District Court for Allamakee
County, James L. Beeghly, Judge.

The plaintiffs appeal from the district court dismissal
of their claim for damages resulting from the defendants
unduly influencing Margaret Olson to change her will before
she died. **AFFIRMED.**

David J. Dutton and J. Scott Bayne of Mosier, Thomas,
Beatty, Dutton, Braun & Staack, Waterloo, for appellants.

J. Vance Jorgensen, Mason City, for appellee Joseph
Lea.

Michael Moon of Cartwright, Druker & Ryden, Marashalltown, for appellee Theresa Lea.

Harry Harwood III of Harwood Law Office, Eldora, for appellee Dorothy Lea.

Mary Jane White of Law Office of Mary Jane White, Decorah, for appellees Ambrose Lea and Eunice Lea.

Andrew P. Nelson of Meyer, Lorentzen & Nelson, Decorah, for appellees Gilbert Lea, Florence Flaherty, Lavonne Lea-Peterson and Donna Faber.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

The present case stems from a series of actions involving the will of Margaret Olson, who died on August 13, 1986. Prior to her death, Margaret executed a last will and testament. That will left the bulk of her estate to her nephew, George Huffey. However, Margaret's other nieces and nephews exerted undue influence to get her to write a second will in their favor. The Huffeys ultimately succeeded in having the second will set aside on the grounds of undue influence and lack of testamentary capacity. In re Estate of Olson, 451 N.W.2d 33 (Iowa App. 1989).

The Huffeys then brought the present action for committing undue influence and tortious interference with a bequest. They sought legal fees, costs, expenses, losses of their time from farming, and damages for their mental anguish and embarrassment. The Huffeys also sought punitive damages. The defendants filed motions to dismiss.

The district court ruled Jean Huffey had failed to state a claim on the grounds she was not a real party in interest. The district court also dismissed counts I and II of the Huffeys' petition, relying on the doctrines of claim preclusion and res judicata. The district court reasoned the Huffeys' claims should have been included under the doctrine of res judicata in the original action to set aside the will.

The Huffeys appealed. They maintain the first lawsuit was in probate against Margaret Olson's estate. The Huffeys argue the second lawsuit seeking damages was not against the estate but against the numerous named defendants personally. They contend the issue of recovering damages for undue influence or tortious interference could not have been raised in the probate action. The Huffeys also argue Jean's claims should not have been dismissed since under Margaret's will Jean was bequeathed personal property and a percentage share of the estate. Further, they argue Jean was a statutory beneficiary of all of George's property during their marriage. The Huffeys lastly maintain the district court erred in granting Donna Faber's (Lea's) motion to quash, since service upon her complied with Iowa Code section 671.3.

Our review is for errors of law. Iowa R. App. P. 4.

I. Intentional Interference With a Bequest.

A claim of intentional interference with a bequest is a natural extension of the tort of intentional interference with prospective contracts. See Restatement (Second) of Torts §§ 766B and 774B. Unlike the liability stated in section 766B of the Restatement, the liability under section 774B is limited to cases in which the actor has interfered with the inheritance or gift by means that are

independently tortious in character. Restatement (Second) of Torts § 774B.

We set out the pertinent statement of the Restatement (Second) of Torts:

Section 774B. Intentional Interference With Inheritance or Gift.

One who by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for the loss of the inheritance or gift.

This tort is relatively new to our body of law. It was apparently first recognized in the Massachusetts case of Ross v. Wright, 286 Mass. 269, 190 N.E. 514 (1934). 86 C.J.S. Torts § 130, fn. 24 (1954). To be actionable, this tort requires not only intentional interference with a bequest, but also the interference must be tortious. See Restatement (Second) of Torts § 774B(c). This tortious conduct usually includes fraud, duress, defamation, undue influence, or a tortious abuse of a fiduciary trust. Id. It may also include forgery, alteration, or suppression of a will or document making a gift. Id. Consequently, if one utilizes legitimate means to induce a testator to alter his or her will in favor of the intervenor, there is no cause of action under this tort. Therefore, some sort of tortious conduct is an element of this cause of action.

To be actionable, the expectancy of the plaintiff must be reasonably certain. In other words, there can only be recovery if the inheritance or gift would have been

received but for the tortious interference of the actor. Id. at § 774B(d). Thus, there must be proof to a reasonable degree of certainty that the bequest or devise would have been in effect at the time of the death of the testator. Id. This can be shown with complete certainty where a will is suppressed or altered after the death of the testator. Id.

However, in other cases where the will is changed or revoked by the testator, as in the present case, complete certainty is not possible. In these cases, the party bringing the action must establish by a preponderance that but for the tortious interference of the actor the expectancy or gift would have been completed according to the plaintiff's expectations. Thus, reasonable certainty that the testator would have made the expected legacy or bequest absent the tortious interference is another element of this tort. Id.

The normal remedy for this tort is an action at law. Id. However, if the actor has received some benefit by the bequest or legacy, the court may impose a constructive trust or other equitable remedy. Id. The measure of damages in this tort action is similar to that for intentional interference with a prospective contract. See Restatement (Second) of Torts § 774A. The party wronged is entitled to damages for any losses suffered, including compensatory and consequential damages. Id.

The appellees do not seriously challenge appellants' claim that this action is recognized in Iowa.

II. Tort Claims Triable in Probate.

We deal next with whether the Huffeys' present tort claims could have been brought in the underlying probate will contest. The Iowa Supreme Court has already answered this question. Frohwein v. Haesemeyer, 264 N.W.2d 792 (Iowa 1978). In Frohwein, the supreme court stated affirmatively the tortious interference claim could have been brought with the will contest action. Id. at 795. Both actions involved the same parties. See id at 793-94. Actions contesting a will are triable in probate as law actions. Iowa Code § 633.33.

In the present case, all parties were involved in the underlying will contest. See In re Estate of Olson, 451 N.W.2d 33, 33-34 (Iowa App. 1989). The tort claims arose out of and are essentially identical to the issues litigated in the earlier case. We determine the Huffeys' present tort claims could have been raised in the earlier will contest. We affirm the trial court on this issue.

III. Claim Preclusion.

We now turn to the main issue on appeal: whether the Huffeys are precluded from bringing this present action under the doctrine of claim preclusion. We turn to Iowa case law for the applicable doctrine.

Claim preclusion under the doctrine of res judicata is based on the principle that a party may not split or try his claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial. An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claims at one time and not in separate actions.

* * *

[T]he basis of the plaintiff's recovery is liability-creating conduct on the part of the defendant, the invasion of a legally protected interest of the plaintiff and the necessary causal connection between defendant's acts and plaintiff's injury. The plaintiff having alleged operative facts which state a cause of action because he tells of defendant's misconduct and his own harm has had his day in court. He does not get another day after the first lawsuit is concluded by giving a different reason than he gave in the first for recovery of damages for the same invasion of his rights. The problem of his rights against the defendant based upon the alleged wrongful acts is fully before the court whether all the reasons for recovery were stated to the court or not.

B & B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d 279, 286
(Iowa 1976) (citations omitted).

We determine the trial court's dismissal of this action is correct because of claim preclusion under the doctrine of res judicata. The prior case concerned the same fact issues as the present one, namely the defendants' exertion of undue influence on Margaret Olson to interfere in the Huffeys' bequest expectations. Other than the estate, the parties in both actions are identical. The evidence on liability is identical. The only real difference is damages. A final judgment was reached in the prior case,

finding for the Huffeys. See In re Estate of Olson, 451 N.W.2d at 37.

The Huffeys could have brought the present claims in the earlier case. Frohwein, 264 N.W.2d at 795. They can not try their claim piecemeal, by splitting it into separate causes of action. We affirm the trial court on this issue.

We determine the trial court correctly dismissed the present action on the grounds of claim preclusion under the doctrine of res judicata. Any matters not addressed are either covered by our opinion or are without merit.

We affirm the trial court in full. Costs of appeal taxed to appellants.

AFFIRMED.